

**BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001**

**Public Inquiry Concerning the  
Terms of 39 U.S.C. 404(d)**

**Docket No. PI2016-2**

**Reply Comments of the National Association of Postmasters of the United States**

March 29, 2016

The National Association of Postmasters of the United States (NAPUS) hereby responds to initial comments filed pursuant to the Commission's notice for comments included in Order 2862, as amended by Order 3097, an inquiry relating to the Commission's Jurisdiction Over Postal Service Determinations to Close or Consolidate Post Offices.

The Initial Comments of NAPUS focused on preserving Commission review over actions that may be taken by the Postal Service relating to "rearrangements" and "consolidations." NAPUS believes that safeguarding Commission jurisdiction over such actions complies with the existing statute, fulfills the legislative intent underlying the statute, and protects the postal services to rural and small communities. Other commenters concur with NAPUS' deep concerns about jettisoning Commission oversight over such Postal Service actions.<sup>1, 2</sup> The Public Representative correctly points out that Commission oversight ensures transparency with regard to Postal Service decision-making.<sup>3</sup>

In its Initial Comments, the Postal Service argues that the Commission should defer to the agency with regard to defining such terms in section 404(d) as "closing" and "consolidation." NAPUS respectfully disagrees and contends that the Postal Service misapplies *Chevron USA, Inc. v. NRDC*, 468 US 837, relative to asking the Commission to yield to the agency's updated definition of "consolidation."<sup>4</sup> The *Chevron* test first asks whether Congress has directly spoken to the question at issue. If the intent of Congress is clear, that intent is effective. Second, if there is ambiguity, agency deference should be accorded if its interpretation is consistent with the purpose of the statute. NAPUS maintains that Congress intended the Commission to have jurisdiction over consolidations, as understood prior to the 2011 Postal Service regulation update. This point is illuminated by the legislative history of 39 USC §404(d), as explained by its author. Consolidations can "create branches out of many post offices close to large cities [and thus] transfer a community-oriented post office into one administered through instructions and directives of large-city postmasters with little or no community involvement."<sup>5</sup> Not surprisingly, the Postal Service was not supportive of the Randolph language adopted by the Senate, in August 1976, and codified in Public Law 94-421. The agency argued, as it does now, that such restrictions hamper managerial

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<sup>1</sup> Initial Comments of Association of United States Postal Lessors, 2

<sup>2</sup> Initial Comment of Public Representative, 3

<sup>3</sup> Ibid

<sup>4</sup> 39 CFR 241

<sup>5</sup> Senator Jennings Randolph, Hearing on S. 2844, Senate Committee on Post Office and Civil Service, Part 4, 94<sup>th</sup> Congress, 2<sup>nd</sup> Session, 142-143

discretion over postal operations. Nevertheless, it is instructive that on two separate votes the Senate overwhelming expressed bipartisan support of the measure. The body knew full well Senator Randolph's rationale for the provision. The Senate defeated a motion to table the Randolph Amendment by a vote of 17-58; and, subsequently, the Senate approved the amendment 60-13.

A series of federal court decisions validated the congressional intent and described how consolidations, as envisioned by Congress, fall under the rubric of 404(d). It is important to note that each of the below cases articulated distinctions between the transfer of particularly postal operations (e.g., casing, sorting, delivery, etc.) and administrative consolidations. Hence, the focus on consolidation is the presence of a postmaster and administrative independence. In *Wilson v. USPS* (1977), the court analyzed one aspect of a "consolidation" and how the Postal Service's action, in this particular case, did not violate the law:

In this instance, public services will at the very least remain substantially the same. All of the local post offices will remain in existence; the postmasters and most of the postal employees will retain their positions... The court is impressed and indeed finds a substantial degree of merit with plaintiff's argument. It appears beyond dispute that Inglewood is lacking a full-time postmaster. Arguably, therefore, Inglewood has been reduced to the status of a postal station or branch. Although plaintiff requests more relief than this violation would afford, I am disposed to order the Inglewood postmaster to return to his full-time duties at Inglewood and to order compliance with the requisites of section 404(b) before the Inglewood Post Office is consolidated with the Marina Facility.<sup>6</sup>

As a footnote to this particular issue, the court did not direct the Postal Service to return the postmaster to Inglewood because its postmaster was lost prior to enactment of the Randolph provision.

Another case addressing congressional intent relating to "consolidation" was *Knapp v. USPS* (1978), where the court wrote:

"Consolidation," while more difficult to describe, certainly has the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office. Given the prospect of adverse impact on the populace of the postal community of such closing or consolidation, it makes perfect sense to accord affected postal customers the right to notice and a hearing prior to the consolidation as §404(b) requires.<sup>7</sup>

In its holding, the court made a distinction between consolidation of administrative functions and the transfer of operational function, specifically bulk mail sorting. The court pointed out that *Knapp* did not "involve the subordination of management of one post office to another." If it did involve subordination, the court would likely have found for the plaintiff. The court

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<sup>6</sup> *Wilson v. USPS*, 441 F.Supp. 803

<sup>7</sup> *Knapp v. USPS*, 449 F.Supp.158

opined that transferring sorting operations would not impact customers; as such, the transfer would not constitute a closing or consolidation, as envisioned by §404(b).

The final case exploring the term “consolidation” was *Citizens for Hopkins Post Office v. USPS* (1993). The Postal Service relocated casing and sorting operations of the Hopkins Post Office to another nearby postal facility, yet the postmaster remained at Hopkins. In its analysis the court found that that Postal Service’s relocation of the aforementioned functions did not violate the law. It referenced the Postal Service’s 2011 definition of the “consolidation”:

It clearly defines “consolidation” as an action in which a post office would lose its independence [emphasis added] and individual identity. It is the opinion of the court that such an action, as defined by the Postal Service, is clearly the type of action Congress intended to trigger the operation of §404(b).<sup>8</sup>

The court declared that yielding independent administrative and managerial functioning is what Congress meant by consolidation. Moreover, the Hopkins decision reinforced the Knapp precedent in analyzing the term consolidation: “...it is clear that there has been no consolidation because the Hopkins postmaster continues to operate the post office and to be responsible for the day-to-day management of that office, albeit she is the only employee there.”<sup>9</sup>

In summary, granting the Postal Service deference with regard to its definition of “consolidation” would only be warranted if there was ambiguity relating to congressional intent over the term, Congress and the courts have understood the term without such ambiguity. As such, the Commission should not relinquish its jurisdiction over Postal actions that would constitute a consolidation within the meaning of 39 USC §404(d).

Respectfully submitted,

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<sup>8</sup> *Citizens of Hopkins v. USPS*, 830 F.Supp. 296

<sup>9</sup> *Ibid*